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## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

#### **32 CFR Part 114**

**[Docket ID: DOD-2014-OS-0131]**

**RIN 0790-AJ31**

#### **Victim and Witness Assistance**

**AGENCY:** Under Secretary of Defense for Personnel and Readiness (USD(P&R)), DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule adds a part to the Code of Federal Regulations which assists victims and witnesses of alleged crimes committed in violation of the Uniform Code of Military Justice (UCMJ), and discusses the rights of crime victims under the UCMJ which are more extensive than those of witnesses. The rule also describes notification and assistance available to victims and witnesses of crime from initial contact with the local responsible official, law enforcement officer, or criminal investigation officer through the investigation of the crime and the prosecution, acquittal or confinement, and release of the accused. Finally, the rule includes annual reporting requirements for assistance provided across the DoD to victims of and witnesses to sex-related crime, and legal assistance for sex-related crime victims.

**DATES:** This rule is effective on [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Lt Col Ryan A. Hendricks, Office of Legal Policy, 703-571-9301.

**SUPPLEMENTARY INFORMATION:**

## **Background**

The Military Services are required to provide legal counsel, known as Special Victims' Counsel/Victims' Legal Counsel (SVC/VLC), to assist victims of alleged sex-related offenses under Articles 120, 120a, 120b, 120c, and 125 of the UCMJ, to include victims of alleged attempts to commit the enumerated offenses, who are eligible for legal assistance. The Military Services are also required to establish a special victim capability comprised of specially trained criminal investigators, judge advocates, paralegals, and victim/witness assistance personnel to support victims of covered special victim offenses. To de-conflict with victims' counsel programs, this distinct group of recognizable professionals will be referred to, at the DoD level, as the "Special Victim Investigation and Prosecution (SVIP)" capability.

## **Authority**

This rule implements all of the following requirements under law: 10 U.S.C. chapter 47, the UCMJ; 10 U.S.C. 1034, 1044, 1044e 1058, 1059, and 1408; 18 U.S.C. 1514; and section 573 of Public Law 112-239, requiring the Military Services to establish a special victim capability comprised of specially trained investigators, judge advocates, paralegals, and victim witness assistance personnel to support victims of covered alleged offenses. Sections 1701 and 1716 of Public Law 113-66 strengthened the rights of victims of alleged crimes committed under the UCMJ, and provided for the designation of SVC/VLC for victims of covered offenses. Section 533 of Public Law 113-291 extended eligibility for SVC/VLC services to members of a reserve component of the armed forces.

## **Major Provisions of the Regulatory Action**

This rule describes the responsibilities that the USD(P&R), Inspector General of the Department of Defense, and other DoD component heads have when dealing with the procedures

described in the regulatory text. The rule also discusses procedures involving local responsible officials, comprehensive information and services to be provided to victims and witnesses, SVIP capability, legal assistance for crime victims, and special victims' counsel programs.

This regulation: (1) Provides a complete victim and witness assistance policy, to ensure the consistent and effective management of DoD victim and witness assistance programs operated by DoD Components. The final rule implements statutory requirements for the DoD victim assistance programs. It revises the rights for crime victims of alleged offenses committed under the UCMJ, requires the Military Services to create enforcement mechanisms, provides for legal assistance for crime victims entitled to legal services, requires that Military Services provide SVC/VLC to assist victims of covered alleged offenses, and further implements the SVIP capability, which provides enhanced support to victims of sexual assault, serious domestic violence, and child abuse alleged offenses. VWAP provides guidance for assisting victims and witnesses of alleged crimes from initial contact through investigation, prosecution, confinement, and release, until the victim specifies to the local responsible official that he or she no longer requires or desires services. Particular attention is paid to victims of serious and violent alleged crimes, including child abuse, domestic violence, and sexual assault.

(2) Strengthens the rights of crime victims in the military justice system and requires the establishment mechanisms for enforcement of these rights in each Military Department, in accordance with section 1701 of Public Law 113-66. These provisions ensure victims have a right to be reasonably heard at public hearings concerning the continuation of confinement before the trial of the accused, preliminary hearings under section 832 (Article 32) of the UCMJ, and court-martial proceedings relating to the Military Rules of Evidence (M.R.E.) 412, 513, and 514 of the Manual for Courts-Martial (MCM) (available at

<http://www.apd.army.mil/pdf/mcm.pdf>) and that all victims are treated with fairness and respect for their dignity and privacy.

(3) Orients victims and witnesses to the military justice system, about the military criminal justice process, on the role of the victim or witness in the process, and how the victim or witness can obtain additional information concerning the process and the case.

(4) Provides for timely notification of information and assistance available to victims and witnesses of alleged crimes from initial contact through investigation, prosecution, and confinement.

(5) Enables victims to confer with the attorney for the U.S. Government in the case before preliminary and trial proceedings, and to express their views to the commander or convening authority as to disposition of the case.

(6) Assists victims with prompt return of personal property held as evidence during a military criminal investigation and court-martial.

(7) Provides eligible victims and military families with access to transitional compensation in accordance with Federal law and 32 CFR part 111, "Transitional Compensation for Abused Dependents." Internal DoD policy related to that program is contained in DoD Instruction 1342.24 of the same name (available at

<http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/134224p.pdf>).

(8) Ensures victims are aware of procedures to receive restitution as provided in accordance with State, local, and Federal crime victims' funds, and the procedures for applying for such funds. Restitution may also be available from, or offered by, an accused as a condition in the terms of a pretrial agreement, during the sentencing process, or as a part of post-trial clemency requests under Rule for Courts-Martial 1105, of the MCM. Under Article 139, UCMJ, victims

may also be provided with relief if the property loss or damage resulted from wrongful taking or willful damage by a member of the Armed Forces due to riotous, violent, or disorderly conduct.

(9) Mandates compliance with DoD standards for victim assistance services in the military community established in DoD Instruction 6400.07 “Standards for Victim Assistance Services in the Military Community,” November 25, 2013, as revised (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640007p.pdf?ver=2018-07-06-073608-400>).

(10) Provides that crime victims who are entitled to military legal assistance under sections 1044 and 1044e of title 10, U.S.C., and as further prescribed by the Military Departments and National Guard Bureau policies, may consult with a military legal assistance attorney.

(11) Provides legal counsel, known as Special Victims’ Counsel or Victims’ Legal Counsel (SVC/VLC), to assist victims of alleged sex-related offenses in violation of Articles 120, 120a, 120b, 120c, and 125 (before January 1, 2019) of the UCMJ, and attempts to commit any of these offenses under Article 80 of the UCMJ, regardless of whether the report of the offense is restricted or unrestricted. Individuals entitled to SVC/VLC representation include any of the following:

(a) Individuals eligible for military legal assistance under sections 1044 and 1044e of title 10, U.S.C., and as further prescribed by the Military Departments’ and National Guard Bureau policies.

(b) Members of a reserve component of the armed forces, in accordance with section 533 of the National Defense Authorization Act for Fiscal Year 2015, and as further prescribed by the Military Departments and National Guard Bureau policies.

(12) Establishes a SVIP capability in each Military Service comprised of specially trained criminal investigators, judge advocates, paralegals, and victim and witness assistance personnel to work with specially trained military criminal investigators to support victims of alleged adult sexual assault, domestic violence, and child abuse. To de-conflict with the names of SVC/VLC programs, this distinct group of recognizable professionals will be referred to as SVIP at the DoD level. Ensures SVIP training programs meet established DoD and Military Service standards for special prosecutors, paralegals, VWAP coordinators and providers, and legal support personnel.

(13) Establishes local Victim and Witness Assistance Councils, when practicable, at each military installation, to ensure victim and witness service providers follow an interdisciplinary approach. This will ensure effective coordination between VWAP coordinators and DoD personnel providing related services, including sexual assault prevention and response coordinators, family advocacy personnel, military treatment facility health care providers and emergency room personnel, family service center personnel, chaplains, military equal opportunity personnel, judge advocates, SVC/VLCs, unit commanding officers, corrections personnel, and other persons designated by the Secretaries of the Military Departments.

(14) Maintains annual reporting requirements on assistance provided across the DoD to victims and witnesses of alleged crimes, which will be provided to the Department of Justice Office of Victims of Crime and the Bureau of Justice Statistics.

### **Comments and Responses**

On May 22, 2015, the Department of Defense published a proposed rule titled “Victim and Witness Assistance” (80 FR 29571-29582) for a 60-day public comment period. This section

addresses the three public comments received. No changes were made to the rule based on public comment.

*Comment:* Two respondents argued for extension of legal assistance to civilian victims with no military connection to ensure all victims can enforce their rights in the military justice process, not just those eligible for Special Victims' Counsel/Victims' Legal Counsel (SVC/VLC).

*Response:* Congress amended 10 U.S.C. 1044e in the National Defense Authorization Act for Fiscal Year 2016 (section 532, Public Law 114-92) to specifically authorize Military Departments to provide civilian employees of the Department, who are victims of a sex-related offense, with SVC services. The proposed rule included the eligibility of civilian employees to receive SVC/VLC services at § 114.6, paragraph (d)(i), because they are eligible under 10 U.S.C. 1044e. This content is located in this final rule at § 114.6, paragraph (e)(i) due to the correction of a formatting error in the proposed rule.

*Comment:* One respondent suggested amending the policy statement in §114.4, paragraph (c) to require each DoD Component to provide particular attention and support to victims of “serious or violent crimes” instead of “serious, violent crimes.” The respondent expressed concern that victims of serious financial crimes suffer grave harm and should be afforded the same basic rights of notification as other violent crimes. The respondent further recommended expressly including stalking as a crime and requested DoD require training on the dynamics and impact of stalking.

*Response:* The rights of victims and witnesses are generally the same except that sexual assault victims have been granted some additional rights in recent years. Financial crime victims, therefore, have the same rights as other non-sexual assault victims. The list of training

requirements is also not exhaustive and stalking could be included within the training on sexual assaults, domestic violence, or in the section on identifying safety concerns and specific needs of a victim. No changes were made to the rule text because the Department believes this rule sets minimum standards and permits the Military Departments some flexibility to tailor training as needed to maximize effectiveness for target populations and locations.

*Comment:* One respondent called for dedicated Victim-Witness Liaisons (VWLs) in each prosecution office in order to relieve over-burdened prosecutors from VWL duties.

*Response:* The Department believes the Military Departments are well-suited to determine the best allocation of their resources to fulfill requirements.

*Comment:* One respondent requested clarification on the interaction between the Freedom of Information Act and the Privacy Act, and specific identification of what documents may be provided to victims.

*Response:* The comment is too broad and encompasses too many variable possibilities to provide a narrow answer. The Department prioritizes protecting personally identifying information, and/or sensitive personal information. However, the Department shall comply with the established law under both the Freedom of Information Act and the Privacy Act in responding to requests for information related to the former. Additional information about the Department's implementation of the Freedom of Information Act is available at 32 CFR part 286, and its implementation of the Privacy Act is available at 32 CFR part 310.

*Comment:* One respondent expressed concern that the forms referenced in this policy blur the rights of victims and witnesses and insufficiently distinguish trial rights from those that may exist in administrative forums.



*Response:* The Department appreciates this feedback on the forms and will consider it when the forms are next revised.

*Comment:* One respondent requested further guidance on designations of guardians when there are no appropriate family members to be designated.

*Response:* The Department believes the final rule provides sufficient guidance and considerations for the appropriate designations of guardians. This guidance can be found in §114.6(c)(11)(ii) of this final rule.

### **Additional Edits**

Following further coordination within the Department of Defense, edits were made to correct citations, clarify provisions, improve the accuracy of the sample letter in Figure 1, and harmonize the rule with the following Department of Defense Forms: DD Form 2701, “Initial Information for Victims and Witnesses of Crime” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2701.pdf>); DD Form 2702, “Court-Martial Information for Victims and Witnesses of Crime (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2702.pdf>); DD Form 2703, “Post-Trial Information for Victims and Witnesses of Crime” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2703.pdf>); DD Form 2704, “Victim/Witness Certification and Election Concerning Prisoner Status” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2704.pdf>); DD Form 2704-1, “Victim Election of Post-Trial Rights” (one finalized, will be made available at [https://www.esd.whs.mil/Directives/forms/dd2500\\_2999/](https://www.esd.whs.mil/Directives/forms/dd2500_2999/)); DD Form 2705, “Notification to Victim/Witness of Prisoner Status” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2705.pdf>); and DD Form 2706,

“Annual Report on Victim and Witness Assistance” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2706.pdf>).

Additional edits to the provision regarding who can assume the rights of a victim who is under 18 years of age, incompetent, incapacitated, or deceased were made to comply with the National Defense Authorization Act (NDAA) for Fiscal Year 2017 (section 5105, Public Law 114-328). Previously, NDAA Fiscal Year 2015 language required a military judge to make such a designation even if a civilian judge already made a legal designation, or if there are already legal guardians and no one disputes who should act for the victim. The NDAA Fiscal Year 2017 language removes the requirement of the military judge designation, and § 114.6(c)(11) was edited to remove text relating to the military judge.

Section 114.6(b)(1), “Rights of crime victims,” was also amended to include additional victims’ rights provided by 18 U.S.C. 3772 and page 758 of the NDAA Fiscal Year 2015. These rights pertain to medical forensic examinations, sexual assault evidence collection kits, and the victim’s preference for whether prosecution occurs in a military or civilian court. Publishing these amendments for public comment is impracticable, unnecessary, and contrary to public interest because the amendments are based upon a decision made by Congress which DoD has no discretion to alter or expand upon.

## **Regulatory Procedures**

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches

that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action,” under Section 3(f) of EO 12866 and was reviewed by the Office of Management and Budget.

#### Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs”

The rule is not expected to be an EO 13771 regulatory action, because it is not significant under EO 12866.

#### Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### Section 202, Public Law 104-4, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)

The Department of Defense certifies that this final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require DoD to prepare a regulatory flexibility analysis.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501-3520) applies to collections of information using identical questions posed to, or reporting or recordkeeping requirements imposed on, ten or more members of the public. This rule does not impose requirements under the PRA.

Executive Order 13132, “Federalism”

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

**List of Subjects in 32 CFR Part 114**

Child welfare, Military law, Uniform Code of Military Justice.

Accordingly, 32 CFR part 114 is added to read as follows:

**PART 114—VICTIM AND WITNESS ASSISTANCE**

Sec.

114.1 Purpose.

114.2 Applicability.

114.3 Definitions.

114.4 Policy.

114.5 Responsibilities.

114.6 Procedures.

**Authority:** 10 U.S.C. chapter 47; 10 U.S.C. 113, 1034, 1044, 1044e, 1058, 1059, and 1408; 18 U.S.C. 1512 through 1514; section 573 of Pub. L. 112-239, 126 Stat. 1632; sections 1701 and 1706 of Pub. L. 113-66, 127 Stat. 672; and section 533 of Pub. L. 113-291, 128 Stat. 3292.

**§114.1 Purpose.**

This part:

(a) Establishes policy, assigns responsibilities, and prescribes procedures to assist victims and witnesses of alleged crimes committed in violation of 10 U.S.C. chapter 47, also known and referred to in this part as the Uniform Code of Military Justice (UCMJ).

(b) Establishes policy, assigns responsibilities, and prescribes procedures for:

(1) The rights of crime victims under the UCMJ and required mechanisms for enforcement, in accordance with section 1701 of Public Law 113-66, “National Defense Authorization Act for Fiscal Year 2014,” and in accordance with DoD standards for victim witness assistance services in the military community established in DoD Instruction 6400.07, “Standards for Victim Assistance Services in the Military Community,” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640007p.pdf?ver=2018-07-06-073608-400>).

(2) Providing timely notification of information and assistance available to victims and witnesses of crime from initial contact through investigation, prosecution, and confinement in accordance with 18 U.S.C. 1512 through 1514, 32 CFR part 286, “DoD Freedom of Information Act (FOIA) Program,” 32 CFR part 111, “Transitional Compensation for Abused Dependents,” DoD Instruction 1325.07, “Administration of Military Correctional Facilities and Clemency and Parole Authority,” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/132507p.pdf?ver=2019-02->

19-075650-100), DoD Directive 7050.06, “Military Whistleblower Protection,” (available at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/705006p.pdf>), and 10 U.S.C. 113, 1034, 1059, and 1408; and section 1706 of Public Law 113-66.

(3) Annual reporting requirements on assistance provided across the DoD to victims and witnesses of alleged crimes.

(c) Provides for legal assistance for crime victims entitled to such services pursuant to 10 U.S.C. 1044 and 1044e, and in accordance with Under Secretary of Defense for Personnel and Readiness (USD(P&R)) Memorandum, “Legal Assistance for Victims of Crimes” (available at [http://www.sapr.mil/public/docs/directives/Legal\\_Assistance\\_for\\_Victims\\_of\\_Crime-Memo.pdf](http://www.sapr.mil/public/docs/directives/Legal_Assistance_for_Victims_of_Crime-Memo.pdf)), and 10 U.S.C. 1565b, and as further prescribed by the Military Departments and National Guard Bureau policies.

(d) Adopts section 573 of Public Law 112-239, “The National Defense Authorization Act for Fiscal Year 2013,” January 2, 2013, requiring each Military Service to establish a special victim capability comprised of specially trained criminal investigators, judge advocates, paralegals, and victim and witness assistance personnel to support victims of covered special victim offenses. To de-conflict with victims’ counsel programs, this distinct group of recognizable professionals will be referred to, at the DoD level, as the Special Victim Investigation and Prosecution (SVIP) capability.

(e) Adopts the victim and witness portion of the special victim capability in accordance with DoDI 5505.19, “Establishment of Special Victim Investigation and Prosecution (SVIP) Capability within the Military Criminal Investigative Organizations (MCIOs),” March 23, 2017 (available at

<https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/550519p.pdf?ver=2019-08->

[12-152401-387](#)), and Directive-type Memorandum (DTM) 14-003, “DoD Implementation of Special Victim Capability (SVC) Prosecution and Legal Support,” February 12, 2014, Incorporating Change 6, August 15, 2019 (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dtm/DTM-14-003.pdf?ver=2019-08-15-102432-590>).

(f) Adopts section 1716 of Public Law 113-66, and section 533 of the National Defense Authorization Act for 2015 (NDAA 2015), requiring the Military Services to provide legal counsel, known as Special Victims’ Counsel or Victims’ Legal Counsel,(SVC/VLC) to assist victims of alleged sex-related offenses in violation of Articles 120, 120a, 120b, 120c, 125 (before January 1, 2019) of the UCMJ, and attempts to commit any of these offenses under Article 80 of the UCMJ, who are eligible for legal assistance in accordance with 10 U.S.C. 1044 and 1044e, and as further prescribed by the Military Departments and National Guard Bureau policies.

#### **§114.2 Applicability.**

This part applies to any military or civilian victims or witnesses of alleged offenses under the UCMJ. This part also applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this part as the “DoD Components”).

#### **§114.3 Definitions.**

Unless otherwise noted, these terms and their definitions are for the purpose of this part:

\_\_\_\_\_ *Central repository.* A headquarters office, designated by Service regulation, to serve as a clearinghouse of information on a confinee's status and to collect and report data on the delivery of victim and witness assistance, including notification of confinee status changes.

\_\_\_\_\_ *Confinement facility victim witness assistance coordinator.* A staff member at a military confinement facility who is responsible for notifying victims and witnesses of changes in a confinee's status and reporting those notifications to the central repository.

\_\_\_\_\_ *Court proceeding.* A preliminary hearing held pursuant to Article 32 of the UCMJ; a hearing under Article 39(a) of the UCMJ; a court-martial; a military presentencing hearing; or a military appellate hearing. Conferences, such as those between attorneys and the military judge pursuant to Rule for Courts-Martial (R.C.M.) 802 or between attorneys and preliminary hearing officers pursuant to Article 32, are not court proceedings for purposes of this part. If all or part of a court proceeding has been closed to the public by the military judge, preliminary hearing officer, or other official, the victims and witnesses will still be notified of the closed hearing as provided in this part, and of the reasons for the closure. In such a case, the military judge, preliminary hearing officer, or other official may place reasonable limits on the reasons disclosed, if such limits are necessary to protect the safety of any person, the fairness of the proceeding, or are otherwise in the interests of national security.

\_\_\_\_\_ *DoD Component responsible official.* Person designated by each DoD Component head to be primarily responsible in the DoD Component for coordinating, implementing, and managing the victim and witness assistance program established by this part.

\_\_\_\_\_ *Equal opportunity.* The right of all persons to participate in, and benefit from, programs and activities for which they are qualified. These programs and activities will be free from social, personal, or institutional barriers that prevent people from rising to the highest level of



responsibility possible. Persons will be evaluated on individual merit, fitness, and capability, regardless of race, color, sex, national origin, or religion.

\_\_\_\_*Local responsible official.* Person designated by the DoD Component responsible official who has primary responsibility for identifying victims and witnesses of crime and for coordinating the delivery of services described in this part through a multidisciplinary approach. The position or billet of the local responsible official will be designated in writing by Service regulation. The local responsible official may delegate responsibilities in accordance with this part.

\_\_\_\_*Local Victim and Witness Assistance Council.* A regular forum held at the DoD installation, or regional command level, that promotes efficiencies, coordinates victim assistance-related programs, and assesses the implementation of victim assistance standards and victim assistance-related programs, in accordance with this part, DoD Instruction 6400.07, and any other applicable Service guidance.

\_\_\_\_*Military Department Clemency and Parole Board.* In accordance with DoD Instruction 1325.07, a board which assists the Military Department Secretary as the primary authority for administration and execution of clemency, parole, and mandatory supervised release policy and programs.

\_\_\_\_*Military services.* Refers to the Army, the Navy, the Air Force, and the Marine Corps, the Coast Guard, and the Reserve Components, which include the Army and Air National Guards of the United States.

*Protected communication.* (1) Any lawful communication to a Member of Congress or an IG.

(2) A communication in which a member of the Armed Forces communicates information that the member reasonably believes evidences a violation of law or regulation, including a law

or regulation prohibiting sexual harassment or unlawful discrimination, gross mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such communication is made to any of the following:

(i) A Member of Congress, an IG, or a member of a DoD audit, inspection, investigation, or law enforcement organization.

(ii) Any person or organization in the chain of command; or any other person designated pursuant to regulations or other established administrative procedures to receive such communications.

\_\_\_\_\_*Reprisal*. Taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making or preparing to make a protected communication.

\_\_\_\_\_*Restricted reporting*. Defined in 32 CFR part 103.

\_\_\_\_\_*Special victim investigation and prosecution (SVIP) capability*. A distinct, recognizable group of appropriately skilled professionals, consisting of specially trained and selected military criminal investigative organization (MCIO) investigators, judge advocates, victim witness assistance personnel, and administrative paralegal support personnel who work collaboratively to:

(1) Investigate allegations of adult sexual assault, domestic violence involving sexual assault and/or aggravated assault with grievous bodily harm, and child abuse involving sexual assault and/or aggravated assault with grievous bodily harm.

(2) Provide support for the victims of such covered offenses.

\_\_\_\_\_*Special victim offenses*. The designated criminal offenses of sexual assault, domestic violence involving sexual assault, and/or aggravated assault with grievous bodily harm, and child

abuse involving sexual assault and/or aggravated assault with grievous bodily harm, in violation of the UCMJ. Sexual assault includes offenses under Articles 120 (rape and sexual assault in general), 120b (rape and sexual assault of a child), and 120c (other sexual misconduct), or forcible sodomy under Article 125 (before January 1, 2019) of the UCMJ or attempts to commit such offenses under Article 80 of the UCMJ. Aggravated assault with grievous bodily harm, in relation to domestic violence and child abuse cases, includes an offense as specified under Article 128 of the UCMJ (assault). The Military Services and National Guard Bureau may deem other UCMJ offenses appropriate for SVIP support, based on the facts and circumstances of specific cases, and the needs of victims.

\_\_\_\_\_*Special Victims' Counsel/Victims' Legal Counsel (SVC/VLC)*. Legal counsel provided to assist eligible victims of alleged sex-related offenses in violation of Articles 120, 120a, 120b, 120c, and 125 (before January 1, 2019) of the UCMJ and attempts to commit any of these offenses under Article 80 of the UCMJ (or other offenses as defined by the Military Services), in accordance with 10 U.S.C. 1044, 1044e, and 1565b; section 1716 of Public Law 113-66; and section 533 of Public Law 113-291.

\_\_\_\_\_*Specially trained prosecutors*. Experienced judge advocates detailed by Military Department Judge Advocates Generals (TJAGs), the Staff Judge Advocate to the Commandant of the Marine Corps, or other appropriate authority to litigate or assist with the prosecution of special victim cases and provide advisory support to MCIO investigators and responsible legal offices. Before specially trained prosecutors are detailed, their Service TJAG, Staff Judge Advocate to the Commandant of the Marine Corps, or other appropriate authority has determined they have the necessary training, maturity, and advocacy and leadership skills to carry out those duties.

\_\_\_ *Unrestricted reporting.* Defined in 32 CFR part 103.

\_\_\_ *Victim.* A person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime committed in violation of the UCMJ. Victim assistance is limited to individuals eligible for military legal assistance under 10 U.S.C. 1044 and 1044e, and as further prescribed by the Military Departments' and National Guard Bureau's policies. Federal Departments and State and local agencies, as entities, are not eligible for services available to individual victims.

\_\_\_ *Victim assistance personnel.* Personnel who are available to provide support and assistance to victims of alleged crimes consistent with their assigned responsibilities and in accordance with this part. They include part-time, full-time, collateral duty, and other authorized individuals, and may be domestic violence or sexual assault prevention and response coordinators (to include unit and uniformed victim advocates), Sexual Assault Response Coordinators, victim-witness assistance personnel, or military equal opportunity advisors.

\_\_\_ *Victim assistance-related programs.* The SAPR Program; FAP; and the VWAP. A complainant under the DoD MEO Program may be referred by the MEO office to one of the victim assistance-related programs for additional assistance.

\_\_\_ *Witness.* A person who has information or evidence about a criminal offense within the investigative jurisdiction of a DoD Component and who provides that knowledge to a DoD Component. When the witness is a minor, that term includes a parent or legal guardian, or other person responsible for the child. The term does not include an individual involved in the crime as an alleged perpetrator or accomplice.

#### **§114.4 Policy.**

It is DoD policy that:

(a) The DoD is committed to protecting the rights of victims and witnesses of alleged crimes and supporting their needs in the criminal justice process. The DoD Components will comply with all statutory and policy mandates and will take all additional actions within the limits of available resources to assist victims and witnesses of alleged crimes without infringing on the constitutional or other legal rights of a suspect or an accused.

(b) DoD victim assistance services will focus on the victim and will respond, protect, and care for the victim from initiation of a report through offense disposition, if applicable, and will continue such support until the victim is no longer eligible for such services or the victim specifies to the local responsible official that he or she no longer requires or desires services.

(c) Each DoD Component will provide particular attention and support to victims of serious, violent alleged crimes, including child abuse, domestic violence, and sexual assault. In order to ensure the safety of victims, and their families, victim assistance personnel shall respect the dignity and the privacy of persons receiving services, and carefully observe any safety plans and military or civilian protective orders in place.

(d) Victim assistance services must meet DoD competency, ethical, and foundational standards established in DoD Instruction 6400.07, "Standards for Victim Assistance Services in the Military Community," (available at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640007p.pdf>).

(e) Making or preparing to make or being perceived as making or preparing to make a protected communication, to include reporting a violation of law or regulation, including a law or regulation prohibiting rape, sexual assault, or other sexual misconduct, in violation of 10 U.S.C. 920 through 920c, sexual harassment, or unlawful discrimination, in accordance with 10 U.S.C. 1034, section 1709 of Public Law 113-66, and DoD Directive 7050.06, "Military Whistleblower

Protection,” (available at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/705006p.pdf>), shall not result in reprisal activity from management officials.

(f) This part is not intended to, and does not, create any entitlement, cause of action, or defense at law or in equity, in favor of any person or entity arising out of the failure to accord to a victim or a witness the assistance outlined in this part. No limitations are hereby placed on the lawful prerogatives of the DoD or its officials.

#### **§114.5 Responsibilities.**

(a) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)):

(1) Establishes overall policy for victim and witness assistance and monitors compliance with this part.

(2) Approves procedures developed by the Secretaries of the Military Departments that implement and are consistent with this part.

(3) Maintains the DoD Victim Assistance Leadership Council, in accordance with DoD Instruction 6400.07, which advises the Secretary of Defense on policies and practices related to the provision of victim assistance and provides a forum that promotes efficiencies, coordinates victim assistance-related policies, and assesses the implementation of victim assistance standards across the DoD’s victim assistance-related programs.

(4) Submits an annual report to the Office for Victims of Crime, Department of Justice, identifying the number of specified notifications made to victims and witnesses of alleged crimes.

(b) The Director, DoD Human Resources Activity, through the Defense Manpower Data Center, and under the authority, direction, and control of the USD(P&R), assists in formulating a

data collection mechanism to track and report victim notifications from initial contact through investigation to disposition, to include prosecution, confinement, and release.

(c) The Inspector General of the Department of Defense (DoD IG):

(1) Establishes investigative policy and performs appropriate oversight reviews of the management of the Victim Witness Assistance Program (VWAP) by the DoD military criminal investigative organizations (MCIOs). This is not intended to substitute for the routine managerial oversight of the program provided by the MCIOs, the USD(P&R), the DoD Component heads, the DoD Component responsible officials, or the local responsible officials.

(2) Investigates and oversees DoD Component Inspector General investigations of allegations or reprisal for making or preparing to make or being perceived as making or preparing to make a protected communication, in accordance with 10 U.S.C. 1034.

(d) The DoD Component heads:

(1) Ensure compliance with this part, and establish policies and procedures to implement the VWAP within their DoD Components.

(2) Designate the DoD Component responsible official for the VWAP, who will report annually to the USD(P&R) using DD Form 2706, "Victim and Witness Assistance Annual Report" (available at <http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2706.pdf>)

(3) Provide for the assignment of personnel in sufficient numbers to enable those programs identified in the 10 U.S.C. 113 note to be carried out effectively.

(4) Designate a central repository for confinee information for each Military Service, and establish procedures to ensure victims who so elect are notified of changes in inmate status.

(5) Maintain a Victim and Witness Assistance Council, when practicable, at each military installation, to ensure victim and witness service providers follow an interdisciplinary approach.

These providers may include chaplains, sexual assault prevention and response personnel, family advocacy personnel, military treatment facility health care providers and emergency room personnel, family service center personnel, military equal opportunity personnel, judge advocates, SVC/VLCs, unit commanding officers, corrections personnel, and other persons designated by the Secretaries of the Military Departments.

(6) Maintain training programs to ensure Victim Witness Assistance Program (VWAP) providers receive instruction to assist them in complying with this part. Training programs will include specialized training for VWAP personnel assigned to the SVIP capability, in accordance with §114.6(c).

(7) Designate local responsible officials in writing in accordance with Military Service regulations and §114.6(a)(1).

(8) Maintain oversight procedures to ensure establishment of an integrated support system capable of providing the services outlined in §114.6, and meet the competency, ethical, and foundational standards established in DoD Instruction 6400.07. Such oversight may include coverage by DoD Component Inspectors General, staff assistance visits, surveys, and status reports.

(9) Establish mechanisms for ensuring that victims are notified of and afforded the rights specified in the UCMJ, including the rights specified in Article 6b of the UCMJ (10 U.S.C. 806b) and R.C.M. 306.

(10) Establish mechanisms for the enforcement of the rights specified in the UCMJ, including mechanisms for the application for such rights and for consideration and disposition of applications for such rights. At a minimum, such enforcement mechanisms will include the designation of an authority within each Military Service to receive and investigate complaints



relating to the provision or violation of such rights and the establishment of disciplinary sanctions for responsible military and civilian personnel who wantonly fail to comply with the requirements relating to such rights.

#### **§114.6 Procedures.**

(a) *Local responsible officials.* Local responsible officials:

(1) Will coordinate to ensure that systems are in place at the installation level to provide information on available benefits and services, assist in obtaining those benefits and services, and provide other services required by this section.

(2) May delegate their duties as appropriate, but retain responsibility to coordinate the delivery of required services.

(3) May use an interdisciplinary approach involving the various service providers listed in paragraph (b)(7) of this section, to coordinate the delivery of information and services to be provided to victims and witnesses.

(b) *Comprehensive information and services to be provided to victims and witnesses—*(1) *Rights of crime victims.* Personnel directly engaged in the prevention, detection, investigation, and disposition of offenses, to include courts-martial, including law enforcement and legal personnel, commanders, trial counsel, and staff judge advocates, will ensure that victims are accorded their rights in accordance with Article 6b of UCMJ. A crime victim has the right to:

(i) Be reasonably protected from the accused offender.

(ii) Be provided with reasonable, accurate, and timely notice of:

(A) A public hearing concerning the continuation of confinement before the trial of the accused.

(B) A preliminary hearing pursuant to Article 32 of the UCMJ relating to the offense.

(C) A court-martial relating to the offense.

(D) A public proceeding of the Military Department Clemency and Parole Board hearing relating to the offense.

(E) The release or escape of the accused, unless such notice may endanger the safety of any person.

(iii) Be present at, and not be excluded from any public hearing or proceeding described in paragraph (b)(1)(ii) of this section, unless the military judge or preliminary hearing officer of a hearing conducted pursuant to Article 32 of the UCMJ determines, after receiving clear and convincing evidence, that testimony by the victim would be materially altered if the victim observed that hearing or proceeding.

(iv) Be reasonably heard, personally or through counsel at:

(A) A public hearing concerning the continuation of confinement before the court-martial of the accused.

(B) Preliminary hearings conducted pursuant to Article 32 of the UCMJ and court-martial proceedings relating to Rules 412, 513, and 514 of the Military Rules of Evidence (M.R.E.) or regarding other rights provided by statute, regulation, or case law.

(C) A public sentencing hearing relating to the offense.

(D) A public Military Department Clemency and Parole Board hearing relating to the offense. A victim may make a personal appearance before the Military Department Clemency and Parole Board or submit an audio, video, or written statement.

(v) Confer with the attorney for the U.S. Government in the case. This will include the reasonable right to confer with the attorney for the U.S. Government at any proceeding described in paragraph (b)(1)(ii) of this section.

(A) Crime victims who are eligible for legal assistance may consult with a military legal assistance attorney in accordance with paragraph (c)(1) of this section.

(B) Victims of an alleged offense under Articles 120, 120a, 120b, or 120c or forcible sodomy under the UCMJ or attempts to commit such offenses under Article 80 of the UCMJ, who are eligible for legal assistance per Military Department or National Guard Bureau policies or in accordance with 10 U.S.C. 1044 or 1044e, may consult with a SVC/VLC in accordance with paragraph (d)(1) of this section. Victims of these covered alleged offenses shall be informed by a sexual assault response coordinator (SARC), victim advocate, victim witness liaison, military criminal investigator, trial counsel, or other local responsible official that they have the right to consult with a SVC/VLC as soon as they seek assistance from the individual in accordance with 10 U.S.C. 1565b, and as otherwise authorized by Military Department and National Guard Bureau policy.

(C) All victims may also elect to seek the advice of a private attorney, at their own expense.

(vi) Receive restitution as provided in accordance with State and Federal law.

(vii) Proceedings free from unreasonable delay.

(viii) Be treated with fairness and respect for his or her dignity and privacy.

(ix) Express his or her views to the commander or convening authority as to disposition of the case.

(x) Be prevented from, or charged for, receiving a medical forensic examination.

(xi) Have a sexual assault evidence collection kit or its probative contents preserved, without charge.

(xii) Be informed of any result of a sexual assault evidence collection kit, including a DNA profile match, toxicology report, or other information collected as part of a medical forensic examination, if such disclosure would not impede or compromise an ongoing investigation.

(xiii) Be informed in writing of policies governing the collection and preservation of a sexual assault evidence collection kit.

(xiv) Upon written request, receive written notification from the appropriate official with custody not later than 60 days before the date of the intended destruction or disposal.

(xv) Upon written request, be granted further preservation of the kit or its probative contents.

(xvi) Express a preference regarding whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense (for a victim of an alleged sex-related offense that occurs in the United States).

(A) Victims expressing a preference for prosecution of the offense in a civilian court shall have the civilian authority with jurisdiction over the offense notified of the victim's preference for civilian prosecution by the convening authority.

(B) The convening authority shall notify the victim of any decision by the civilian authority to prosecute or not prosecute the offense in a civilian court, if the convening authority learns of any decision.

(2) *Initial information and services.* (i) Immediately after identification of a crime victim or witness, the local responsible official, law enforcement officer, or criminal investigation officer will explain and provide information to each victim and witness, as appropriate, including:

(A) The DD Form 2701, "Initial Information for Victims and Witnesses of Crime" (available at <http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2701.pdf>) or computer-generated equivalent will be used as a handout to convey basic information. Specific points of

contact will be recorded on the appropriate form authorized for use by the particular Military Service.

(B) Proper completion of this form serves as evidence that the local responsible official or designee, law enforcement officer, or criminal investigative officer notified the victim or witness of his or her rights, as described in paragraph (b)(1) of this section. The date the form is given to the victim or witness shall be recorded by the delivering official. This serves as evidence the victim or witness was timely notified of his or her statutory rights.

(ii) The local responsible official will explain the form to victims and witnesses at the earliest opportunity. This will include:

(A) Information about available military and civilian emergency medical and social services, victim advocacy services for victims of domestic violence or sexual assault, and, when necessary, assistance in securing such services.

(B) Information about restitution or other relief a victim may be entitled to, and the manner in which such relief may be obtained.

(C) Information to victims of intra-familial abuse offenses on the availability of limited transitional compensation benefits and possible entitlement to some of the active duty Service member's retirement benefits pursuant to 10 U.S.C. 1059 and 1408 and 32 CFR part 111.

(D) Information about public and private programs available to provide counseling, treatment, and other support, including available compensation through Federal, State, and local agencies.

(E) Information about the prohibition against intimidation and harassment of victims and witnesses, and arrangements for the victim or witness to receive reasonable protection from

threat, harm, or intimidation from an accused offender and from people acting in concert with or under the control of the accused offender.

(F) Information concerning military and civilian protective orders, as appropriate.

(G) Information about the military criminal justice process, the role of the victim or witness in the process, and how the victim or witness can obtain additional information concerning the process and the case in accordance with section 1704 of Public Law 113-66. This includes an explanation of:

(1) Victims' roles and rights during pretrial interviews with law enforcement, investigators, government counsel, and defense counsel and during preliminary hearings pursuant to Article 32 of the UCMJ, and section 1702 of Public Law 113-66.

(2) Victims' rights when action is taken by the convening authority pursuant to Article 60 of the UCMJ, and during the post-trial/clemency phase of the process.

(H) If necessary, assistance in contacting the people responsible for providing victim and witness services and relief.

(I) If necessary, how to file a military whistleblower complaint with an Inspector General regarding suspected reprisal for making, preparing to make, or being perceived as making or preparing to make a protected communication in accordance with 10 U.S.C. 1034 and DoD Directive 7050.06.

(J) Information about the victim's right to seek the advice of an attorney with respect to his or her rights as a crime victim pursuant to Federal law and DoD policy. This includes the right of Service members and their dependents to consult a military legal assistance attorney in accordance with paragraph (d)(1) of this section, or a SVC/VLC in accordance with paragraph (e)(1) of this section.

(3) *Information to be provided during investigation of a crime.* (i) If a victim or witness has not already received the DD Form 2701 from the local responsible official or designee, it will be provided by a law enforcement officer or investigator.

(ii) Local responsible officials or law enforcement investigators and criminal investigators will inform victims and witnesses, as appropriate, of the status of the investigation of the crime, to the extent providing such information does not interfere with the investigation.

(4) *Information and services to be provided concerning the prosecution of a crime.* (i) The DD Form 2702, “Court-Martial Information for Victims and Witnesses of Crime” (available at <http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2702.pdf>) will be used as a handout to convey basic information about the court-martial process. The date it is given to the victim or witness shall be recorded by the delivering official. If applicable, the following will be explained and provided by the U.S. Government attorney, or designee, to victims and witnesses:

(A) Notification of crime victims’ rights, to include the victim’s right to express views as to disposition of the case to the responsible commander and convening authority.

(B) Notification of the victim’s right to seek the advice of an attorney with respect to his or her rights as a crime victim pursuant to Federal law and DoD policy. This includes the right of service members and their dependents to consult a military legal assistance attorney in accordance with paragraph (d)(1) of this section or a SVC/VLC in accordance with paragraph (e)(1) of this section.

(C) Consultation concerning the decisions to prefer or not prefer charges against the accused offender and the disposition of the offense if other than a trial by court-martial.

(D) Consultation concerning the decision to refer or not to refer the charges against the accused offender to trial by court-martial and notification of the decision to pursue or not pursue court-martial charges against the accused offender.

(E) Notification of the initial appearance of the accused offender before a reviewing officer or military judge at a public pretrial confinement hearing or at a preliminary hearing in accordance with Article 32 of the UCMJ.

(F) Notification of the release of the suspected offender from pretrial confinement.

(G) Explanation of the court-martial process.

(H) Before any court proceedings (as defined to include preliminary hearings conducted pursuant to Article 32 of the UCMJ, pretrial hearings conducted pursuant to Article 39(a) of the UCMJ, trial, and presentencing hearings), help with locating available services such as transportation, parking, child care, lodging, and courtroom translators or interpreters that may be necessary to allow the victim or witness to participate in court proceedings.

(I) During the court proceedings, a private waiting area out of the sight and hearing of the accused and defense witnesses. In the case of proceedings conducted aboard ship or in a deployed environment, provide a private waiting area to the greatest extent practicable.

(J) Notification of the scheduling, including changes and delays, of a preliminary hearing conducted pursuant to Article 32 of the UCMJ, and each court proceeding the victim is entitled to or required to attend will be made without delay. On request of a victim or witness whose absence from work or inability to pay an account is caused by the alleged crime or cooperation in the investigation or prosecution, the employer or creditor of the victim or witness will be informed of the reasons for the absence from work or inability to make timely payments on an



account. This requirement does not create an independent entitlement to legal assistance or a legal defense against claims of indebtedness.

(K) Notification of the recommendation of a preliminary hearing officer when an Article 32 preliminary hearing is held.

(L) Consultation concerning any decision to dismiss charges or to enter into a pretrial agreement.

(M) Notification of the disposition of the case, to include the acceptance of a plea of “guilty,” the rendering of a verdict, the withdrawal or dismissal of charges, or disposition other than court-martial, to specifically include non-judicial punishment under Article 15 of the UCMJ, administrative processing or separation, or other administrative actions.

(N) Notification to victims of the opportunity to present to the court at sentencing, in compliance with applicable law and regulations, a statement of the impact of the crime on the victim, including financial, social, psychological, and physical harm suffered by the victim. The right to submit a victim impact statement is limited to the sentencing phase and does not extend to the providence (guilty plea) inquiry before findings.

(O) Notification of the offender’s sentence and general information regarding minimum release date, parole, clemency, and mandatory supervised release.

(P) Notification of the opportunity to receive a copy of proceedings. The convening authority or subsequent responsible official must authorize release of a copy of the record of trial without cost to a victim of sexual assault as defined in R.C.M. 1104 of the MCM and Article 54(e) of the UCMJ. Victims of offenses other than sexual assault, and witnesses of any offenses, may also receive a copy of the record of trial, without cost, as determined by the Military Departments, which may be on a case-by-case basis, in categories of cases, or on the basis of

particular criteria, for example, when it might lessen the physical, psychological, or financial hardships suffered as a result of a criminal act.

(ii) After court proceedings, the local responsible official will take appropriate action to ensure that property of a victim or witness held as evidence is safeguarded and returned as expeditiously as possible.

(iii) Except for information that is provided by law enforcement officials and U.S. Government counsel in accordance with paragraphs (b)(3) and (4) of this section, requests for information relating to the investigation and prosecution of a crime (e.g., investigative reports and related documents) from a victim or witness will be processed in accordance with 32 CFR part 286.

(iv) Any consultation or notification required by paragraph (b)(5)(i) of this section may be limited to avoid endangering the safety of a victim or witness, jeopardizing an ongoing investigation, disclosing classified or privileged information, or unduly delaying the disposition of an offense. Although the victim's views should be considered, this part is not intended to limit the responsibility or authority of the Military Service or the Defense Agency officials to act in the interest of good order and discipline.

(5) *Information and services to be provided on conviction.* (i) Trial counsel will explain and provide services to victims and witnesses on the conviction of an offender in a court-martial. The DD Form 2703, "Post-Trial Information for Victims and Witnesses of Crime" (<http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2703.pdf>), will be used as a handout to convey basic information about the post-trial process.

(ii) When appropriate, the following will be provided to victims and witnesses:

(A) General information regarding the convening authority's action, the appellate process, the corrections process, work release, furlough, probation, parole, mandatory supervised release, or other forms of release from custody, and eligibility for each.

(B) Specific information regarding the election to be notified of further actions in the case, to include the convening authority's action, hearings and decisions on appeal, changes in inmate status, and consideration for parole. The DD Form 2704, "Victim/Witness Certification and Election Concerning Prisoner Status" (available at <http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2704.pdf>) will be explained and used for victims and appropriate witnesses to elect to be notified of these actions, hearings, decisions, and changes in the offender's status in confinement. The DD Form 2704-1, "Victim Election of Post-Trial Rights" (under development, will be available at [http://www.esd.whs.mil/Directives/forms/dd2500\\_2999/](http://www.esd.whs.mil/Directives/forms/dd2500_2999/) once finalized) will be explained and used for victims to make elections about records of trial, submission of matters in clemency, and notifications of certain appellate proceedings.

(I) For all cases resulting in a sentence to confinement, the DD Form 2704 will be completed and forwarded to the Service central repository, the gaining confinement facility, the local responsible official, and the victim or witness, if any, with appropriate redactions made by the delivering official.

(i) Incomplete DD Forms 2704 received by the Service central repository must be accompanied by a signed memorandum detailing the reasons for the incomplete information, or they will be sent back to the responsible legal office for correction.

(ii) Do not allow an inmate access to DD Forms 2704 or attach a copy of the forms to any record to which the inmate has access. Doing so could endanger the victim or witness.

(2) For all cases resulting in conviction but no sentence to confinement, the DD Form 2704 will be completed and forwarded to the Service central repository, the local responsible official, and the victim or witness, if any.

(3) For all convictions with a qualifying victim, a DD Form 2704-1 will be completed for each victim and forwarded to the appropriate points of contact, as determined by the Military Department. This form may be included in the record of trial with appropriate redactions. If a qualifying victim personally signs and initials a declination to receive the record of trial or to submit matters in clemency, this form may satisfy the requirement for a written waiver. *See* Rules for Courts-Martial 1103(g)(3)(C) and 1105A(f)(3).

(4) The DD Forms 2704, 2704-1, and 2705, “Notification to Victim/Witness of Prisoner Status” (available at <http://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2705.pdf>), are exempt from release in accordance with 32 CFR part 286.

(C) Specific information regarding the deadline and method for submitting a written statement to the convening authority for consideration when taking action on the case in accordance with Article 60 of the UCMJ and R.C.M. 1105A.

(6) *Information and services to be provided on entry into confinement facilities.* (i) The victim and witness assistance coordinator at the military confinement facility will:

(A) On entry of an offender into post-trial confinement, obtain the DD Form 2704 to determine victim or witness notification requirements. If the form is unavailable, ask the Service central repository whether any victim or witness has requested notification of changes in inmate status in the case.

(B) When a victim or witness has requested notification of changes in inmate status on the DD Form 2704, and one of the events listed in paragraph (b)(6) of this section occurs, use the

DD Form 2705, "Notification to Victim/Witness of Prisoner Status," to notify the victim or witness.

(1) The date the DD Form 2705 is given to the victim or witness shall be recorded by the delivering official. This serves as evidence that the officer notified the victim or witness of his or her statutory rights.

(2) Do not allow the inmate access to DD Form 2705 or attach a copy of the forms to any record to which the inmate has access. Doing so could endanger the victim or witness.

(C) Provide the earliest possible notice of:

(1) The scheduling of a clemency or parole hearing for the inmate.

(2) The results of the Service Clemency and Parole Board.

(3) The transfer of the inmate from one facility to another.

(4) The escape, immediately on escape, and subsequent return to custody, work release, furlough, or any other form of release from custody of the inmate.

(5) The release of the inmate to supervision.

(6) The death of the inmate, if the inmate dies while in custody or under supervision.

(7) A change in the scheduled release date of more than 30 days from the last notification due to a disposition or disciplinary and adjustment board.

(D) Make reasonable efforts to notify all victims and witnesses who have requested notification of changes in inmate status of any emergency or special temporary home release granted an inmate.

(E) On transfer of an inmate to another military confinement facility, forward the DD Form 2704 to the gaining facility, with an information copy to the Service central repository.

(ii) The status of victim and witness notification requests will be reported annually to the Service central repository.

(7) *Information and services to be provided on appeal.* (i) When an offender's case is docketed for review by a Court of Criminal Appeals, or is granted review by the Court of Appeals for the Armed Forces (C.A.A.F.) or by the U.S. Supreme Court, the U.S. Government appellate counsel or appropriate Military Service designee will ensure that all victims who have indicated a desire to be notified receive this information, if applicable:

(A) Notification of the scheduling, including changes and delays, of each public court proceeding that the victim is entitled to attend.

(B) Notification of the decision of the court.

(ii) When an offender's case is reviewed by the Office of the Judge Advocate General (TJAG) of the Military Department concerned, pursuant to Article 69 and Article 73 of the UCMJ, TJAG will ensure that all victims who have indicated a desire to be notified on DD Form 2704-1 receive notification of the outcome of the review.

(iii) The Military Services may use the sample appellate notification letter found at Figure 1 of this section, or develop their own templates to keep victims informed of appellate court proceedings and decisions.

(8) *Information and services to be provided on consideration for parole or supervised release.* (i) Before the parole or supervised release of a prisoner, the military confinement facility staff will review the DD Form 2704 to ensure it has been properly completed. If there is a question concerning named persons or contact information, it will be immediately referred to the appropriate staff judge advocate for correction.

(ii) When considering a prisoner for release on supervision, the military confinement facility commander will ensure that all victims and witnesses on the DD Form 2704 indicating a desire to be notified were given an opportunity to provide information to the Military Department Clemency and Parole Board in advance of its determination, as documented in the confinement file.

(9) *Reporting procedures.* (i) The DoD Component responsible official will submit an annual report using the DD Form 2706 to: Office of the Under Secretary of Defense for Personnel and Readiness, Attention: Legal Policy Office, 4000 Defense Pentagon, Washington, DC 20301-4000.

(ii) The report will be submitted by March 15 for the preceding calendar year and will address the assistance provided to victims and witnesses of crime.

(iii) The report will include:

(A) The number of victims and witnesses who received a DD Form 2701 from law enforcement or criminal investigations personnel.

(B) The number of victims and witnesses who received a DD Form 2702 from U.S. Government counsel, or designee.

(C) The number of victims and witnesses who received a DD Form 2703 from U.S. Government counsel or designee.

(D) The number of victims and witnesses who elected via the DD Form 2704 to be notified of changes in inmate status.

(E) The number of victims who received a DD Form 2704-1 from U.S. Government counsel or designee.

(F) The number of victims and witnesses who were notified of changes in inmate status by the confinement facility victim witness assistance coordinators via the DD Form 2705 or a computer-generated equivalent.

(G) The cumulative number of inmates in each Military Service for whom victim witness notifications must be made by each Service's confinement facilities. These numbers are derived by totaling the number of inmates with victim or witness notification requirements at the beginning of the year, adding new inmates with the requirement, and then subtracting those confinees who were released, deceased, or transferred to another facility (e.g., Federal, State, or sister Military Service) during the year.

(iv) The Office of the USD(P&R) will consolidate all reports submitted by each Military Service, and submit an annual report to the Bureau of Justice Statistics, and Office for Victims of Crime, Department of Justice.

(c) *Special victim investigation and prosecution (SVIP) capability.* (1) In accordance with DTM 14-003, section 573 of Public Law 112-239, and DoD Instruction 5505.19, the Military Services will maintain a distinct, recognizable group of professionals to provide effective, timely, and responsive worldwide victim support, and a capability to support the investigation and prosecution of special victim offenses within the respective Military Departments.

(2) Covered special victim offenses include:

(i) Unrestricted reports of adult sexual assault.

(ii) Unrestricted reports of domestic violence involving sexual assault and/or aggravated assault with grievous bodily harm.

(iii) Child abuse involving child sexual abuse and/or aggravated assault with grievous bodily harm.



(3) Military Service SVIP programs will include, at a minimum, specially trained and selected:

- (i) Investigators from within MCIOs of the Military Departments.
- (ii) Judge advocates to serve as prosecutors.
- (iii) VWAP personnel.
- (iv) Paralegal or administrative legal support personnel.

(4) Each Military Service will maintain standards for the selection, training, and certification of personnel assigned to provide this capability. At a minimum, SVIP training must:

- (i) Focus on the unique dynamics of sexual assault, aggravated domestic violence, and child abuse cases.
- (ii) Promote methods of interacting with and supporting special victims to ensure their rights are understood and respected.
- (iii) Focus on building advanced litigation, case management, and technical skills.
- (iv) Ensure that all SVIP legal personnel understand the impact of trauma and how this affects an individual's behavior and the memory of a traumatic incident when interacting with a victim.
- (v) Train SVIP personnel to identify any safety concerns and specific needs of victims.
- (vi) Ensure SVIP personnel understand when specially trained pediatric forensic interviewers are required to support the investigation and prosecution of complex child abuse and child sexual abuse cases.

(5) Each Military Service will maintain and periodically review measures of performance and effectiveness to objectively assess Service programs, policies, training, and services. At a minimum, these Service-level review measures will include:

(i) Percentage of all preferred court-martial cases that involve special victim offenses in each fiscal year.

(ii) Percentage of special victim offense courts-martial tried by, or with the direct advice and assistance of, a specially trained prosecutor.

(iii) Compliance with DoD VWAP informational, notification, and reporting requirements specified in paragraphs (b)(1) through (9) of this section, to ensure victims are consulted with and regularly updated by special victim capability legal personnel.

(iv) Percentage of specially trained prosecutors and other legal support personnel having received additional and advanced training in topical areas.

(6) The Military Services will also consider victim feedback on effectiveness of special victim prosecution and legal support services and recommendations for possible improvements, as provided in DoD survivor experience surveys or other available feedback mechanisms. This information will be used by the Military Services to gain a greater understanding of the reasons why a victim elected to participate or declined to participate at trial, and whether SVIP, VWAP, and other legal support services had any positive impact on this decision.

(7) Designated SVIP capability personnel will collaborate with local DoD SARC, sexual assault prevention and response victim advocates, Family Advocacy Program (FAP) managers, and domestic abuse victim advocates during all stages of the military justice process to ensure an integrated capability.

(8) To support this capability, active liaisons shall be established at the installation level with these organizations and key individuals:

(i) Local military and civilian law enforcement agencies.

(ii) SARCs.

- (iii) Victim advocates.
- (iv) FAP managers.
- (v) Chaplains.
- (vi) Sexual assault forensic examiners and other medical and mental health care providers.
- (vii) Unit commanding officers.
- (viii) Other persons designated by the Secretaries of the Military Departments necessary to support special victims.

(9) In cases of adult sexual assault the staff judge advocate or designated representative of the responsible legal office will participate in case management group meetings, in accordance with 32 CFR part 105, on a monthly basis to review individual cases. Cases involving victims who are assaulted by a spouse or intimate partner will be reviewed by FAP.

(10) The staff judge advocate or designated representative of the responsible legal office will participate in FAP case review or incident determination meetings of domestic violence, spouse or intimate partner sexual assault, and child abuse cases in accordance with DoD Instruction 6400.06, "Domestic Abuse Involving DoD Military and Certain Affiliated Personnel" (available at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640006p.pdf>).

(11) In the case of a victim who is under 18 years of age and not a member of the Military Services, or who is incompetent, incapacitated, or deceased, the legal guardians of the victim or the representatives of the victim's estate, family members, or any other person designated as suitable by proper authority, may assume the victim's legal rights. Under no circumstances will an individual designated as representative have been accused of any crime against the victim.

(i) The Secretaries of the Military Departments may publish additional guidance or regulation regarding who, before referral, may designate an appropriate representative, such as the convening authority or other qualified local responsible official.

(ii) In making a decision to appoint a representative, the designating authority should consider:

(A) The age and maturity, relationship to the victim.

(B) The physical proximity to the victim.

(C) The costs incurred in effecting the appointment.

(D) The willingness of the proposed designee to serve in such a role.

(E) The previous appointment of a guardian by a court of competent jurisdiction or appropriate designating authority.

(F) The preference of the victim, if known.

(G) Any potential delay in any proceeding that may be caused by a specific appointment.

(H) Any other relevant information.

(iii) The representative, legal guardian, or equivalent of a victim who is eligible, or in the case of a deceased victim, was eligible at the time of death for legal assistance provided by SVC/VLC, may elect legal representation for a SVC/VLC on behalf of the victim.

(iv) A military judge's responsibilities for designating a representative are listed in R.C.M. 801(a)(6).

(v) In the absence of an appointment of a legal representative, the victim may exercise his/her own legal and regulatory rights, as described herein. Where an appointment is required or discretionary, nothing in this policy precludes a victim from being appointed as his/her own legal representative, as appropriate.

(d) *Legal assistance for crime victims*—(1) *Eligibility*. Active and retired Service members and their dependents are eligible to receive legal assistance pursuant to 10 U.S.C. 1044 and 1565b and Under Secretary for Defense for Personnel and Readiness Memorandum, “Legal Assistance for Sexual Assault Victims,” October 17, 2011.

(2) *Information and services*. Legal assistance services for crime victims will include confidential advice and assistance for crime victims to address:

- (i) Rights and benefits afforded to the victim under law and DoD policy.
- (ii) Role of the VWAP coordinator or liaison.
- (iii) Role of the victim advocate.
- (iv) Privileges existing between the victim and victim advocate.
- (v) Differences between restricted and unrestricted reporting, if applicable.
- (vi) Overview of the military justice system.
- (vii) Services available from appropriate agencies for emotional and mental health counseling and other medical services.
- (viii) The right to an expedited transfer, if applicable.
- (ix) Availability of and protections offered by civilian and military protective orders.

(e) *Special Victims’ Counsel/Victims’ Legal Counsel programs*—(1) *Eligibility*. In accordance with 10 U.S.C. 1044, 1044e, and 1565b, section 1716 of Public Law 113-66, and section 533 of the Public Law 113-291, the Military Services provide legal counsel, known as SVC/VLC, to assist victims of alleged sex-related offenses including Articles 120, 120a, 120b, and 120c, forcible sodomy under Article 125 (before January 1, 2019) of the UCMJ, attempts to commit such offenses under Article 80 of the UCMJ, or other crimes under the UCMJ as authorized by the Service, who are eligible for legal assistance pursuant to 10 U.S.C. 1044e and

as further prescribed by the Military Departments and National Guard Bureau policies.

Individuals eligible for SVC/VLC representation include any of the following:

(i) Individuals entitled to military legal assistance under 10 U.S.C. 1044 and 1044e, and as further prescribed by the Military Departments and National Guard Bureau policies.

(ii) Members of a reserve component of the armed forces, in accordance with section 533 of Public Law 113-291, and as further prescribed by the Military Departments and National Guard Bureau policies.

(iii) Civilian employees of the Department of Defense not otherwise entitled to legal assistance, as provided for in section 532 of Public Law 114-92.

(2) *Attorney-client information and services.* The types of legal services provided by SVC/VLC programs in each Military Service will include:

(i) Legal consultation regarding the VWAP, including:

(A) The rights and benefits afforded the victim.

(B) The role of the VWAP liaison.

(C) The nature of communication made to the VWAP liaison in comparison to communication made to a SVC/VLC or a legal assistance attorney pursuant to 10 U.S.C. 1044.

(ii) Legal consultation regarding the responsibilities and support provided to the victim by the SARC, a unit or installation sexual assault victim advocate, or domestic abuse advocate, to include any privileges that may exist regarding communications between those persons and the victim.

(iii) Legal consultation regarding the potential for civil litigation against other parties (other than the DoD).

(iv) Legal consultation regarding the military justice system, including, but not limited to:

(A) The roles and responsibilities of the military judge, trial counsel, the defense counsel, and military criminal investigators.

(B) Any proceedings of the military justice process in which the victim may observe or participate in person or through his or her SVC/VLC.

(v) Accompanying or representing the victim at any proceedings when necessary and appropriate, including interviews, in connection with the reporting, investigation, and prosecution of the alleged sex-related offense.

(vi) Legal consultation regarding eligibility and requirements for services available from appropriate agencies or offices for emotional and mental health counseling and other medical services.

(vii) Legal representation or consultation and assistance:

(A) In personal civil legal matters in accordance with 10 U.S.C. 1044.

(B) In any proceedings of the military justice process in which a victim can participate as a witness or other party.

(C) In understanding the availability of, and obtaining any protections offered by, civilian and military protecting or restraining orders.

(D) In understanding the eligibility and requirements for, and obtaining, any available military and veteran benefits, such as transitional compensation benefits found in 10 U.S.C. 1059, 32 CFR part 111, "Transitional Compensation for Abused Dependents," and other State and Federal victims' compensation programs.

(E) The victim's rights and options at trial, to include the option to state a preference to decline participation or withdraw cooperation as a witness and the potential consequences of doing so.

(viii) Legal representation or consultation regarding the potential criminal liability of the victim stemming from or in relation to the circumstances surrounding the alleged sex-related offense (collateral misconduct), regardless of whether the report of that offense is restricted or unrestricted in accordance with 32 CFR part 105. Victims may also be referred to the appropriate defense services organization for consultation on the potential criminal implications of collateral misconduct.

(ix) Other legal assistance as the Secretary of Defense or the Secretaries of the Military Departments may authorize.

**Figure 1 to §114.6. Sample Appellate Notification Letter**

[Victim Name]

[Address]

Dear [Mr.][Mrs.][Ms.] [Victim Name]:

The United States [Military Department] believes it is important to keep victims of crimes under the Uniform Code of Military Justice informed of court proceedings and decisions. Based on your election, and in accordance with Department of Defense Instruction 1030.02, "Victim and Witness Assistance," we are providing you with information about the military appellate process. An appeal is a legal proceeding by which a case is brought before a higher court for review of a decision made by a lower court. Convicted military members are generally entitled to appellate review even if they do not specifically allege any errors in the trial process.

[Name of Accused]'s case was submitted for appellate review on [Date] at the [Military Department] Court of Criminal Appeals. The Court of Criminal Appeals may consider briefs about the case or ask for briefs on specific issues in the case. The Court may also decide to hold a public courtroom proceeding to hear arguments about the case. If the Court determines a courtroom proceeding is warranted, you will be notified of the date and location so that you may attend. If the Court declines to hold a courtroom proceeding and decides the issue on the basis of briefs (or in the absence of any briefs), you will be notified of the ultimate decision.

A decision by the [Military Department] Court of Criminal Appeals is not necessarily the final resolution of this case. There are two superior courts from which the Appellant could also seek review. The [Military Department] Court of Criminal Appeals' decision may be appealed to the Court of Appeals for the Armed Forces (C.A.A.F.). If C.A.A.F. declines to review the appeal, the case becomes final and you will be informed. If C.A.A.F. decides to consider the appeal, you will be informed of the review taking place, of any courtroom proceedings, and of the final decision. If C.A.A.F. renders a decision on the case, further review may be sought from the



Supreme Court of the United States. If this were to occur, you will be notified. Cases are also sometimes returned to the [Military Department] Court of Criminal Appeals for further proceedings. In addition, the Appellant may also petition the [Military Department Judge Advocate General] for a new trial based on newly discovered evidence or fraud upon the court. If that were to occur, you will be notified.

Right now, the case is before the [Military Department] Court of Criminal Appeals. Nothing is required of you but if you have questions or desire additional information, please contact [DESIGNATED REPRESENTATIVE/OFFICE] at [CONTACT INFORMATION].

Sincerely,  
(Military Department designee)

Dated: April 7, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.  
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